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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,524	12/19/2000	Ronald W. Hall	7780.650US01 (3M REF.0011	5167
32692	7590	10/18/2005	EXAMINER	
3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427			GRAHAM, ANDREW R	
			ART UNIT	PAPER NUMBER
			2644	
DATE MAILED: 10/18/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/740,524	Applicant(s) HALL ET AL.	
	Examiner Andrew Graham	Art Unit 2644	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: please see continuation sheet(s).
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.


VIVIAN CHIN
ADVISORY PATENT EXAMINER


Andrew Graham
 571-272-7517

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Response to Arguments

Applicant's arguments received 10/3/05 have been fully considered but they are not persuasive.

On page 3, lines 20-22, the applicant has stated, "The 'Response to Arguments' section of the Office Action asserts that it is obvious to make the invention because Ruppert teaches replacing a cable with an I/R connection (Office Action, page 19, lines 12-15)". The examiner respectfully submits, however, that this statement reflects a misinterpretation of the cited passage. The passage in question recites, "Accordingly, replacing this cable with an infrared connection for data transfer, as taught by Ruppert, would have yet enabled such information to be transmitted between the base and headset". The "as taught by Ruppert" clause only pertains to the "infrared connection for data transfer", as is evidenced by the rejection and citations of record. The concept of "replacing" is a particular form of "incorporation" noted in the proposed modification in the rejection of the pertinent claim limitations (page 7, lines 3-6). This statement establishes a reasonable expectation of success for the proposed combination in light of the fact that both methods of transmission (the IR of Ruppert and the cable of 3M) are able to transmit data.

On page 5, lines 11-13, the applicant has stated, "The asserted motivation may provide reasons for adding general I/R communication capabilities to a headset, but do not provide a suggestion or motivation to program the headset operational frequency using I/R

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transmission". The examiner respectfully disagrees. First, it should be noted that it is not the manner of transmission (cabled/IR or wired/wireless) that ultimately "programs" a headset, but rather, the underlying data transmitted in either of such formats. The transmission of such *data*, wherein this data is utilized for programming the headset, is implicit in the teachings of 3M, though the *manner* of transmission is through a wire or cable. Ruppert discloses that *data* may be transmitted in an infrared *manner*. The applicant has acknowledged that the asserted motivation may provide reasons for adding IR communication capabilities to a headset. To argue that such an added manner of IR communication would not be obvious for use with the data or digital signals otherwise communicated in the system of 3M, including that which results in the programming of the headset, fails to acknowledge or give proper weight to the teachings of 3M. The pertinent limitation, so far as it is represented in the pending claim language, is at least considered suggested by and thus obvious in view of the *data* transmitted in the system of 3M and the *manner* of data transmission in the system of Ruppert.

On page 5, lines 18-19, the applicant has stated, "In fact, certain well-known characteristics of infrared technology would likely have deterred ones of ordinary skill in the art from trying to incorporate the technology in the systems". The examiner respectfully submits, however, that arguments of counsel cannot take the place of evidence in the record and that any objective evidence, such as the

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statements made in lines 18-23 of page 5, must be factually supported by an appropriate affidavit or declaration to be of probative value, MPEP 716.01. At present, no such affidavit or declaration has been submitted.